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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1953.

LLOYD WEBER, RUSSELL DAVIS, WALTER PATRICK, THOMAS BLAKE, ALBERT MELTON, WINFIELD SCOTT MUSLER, ROBERT HAMMER, WILBERT A. REED, BERNARD SIEMER, and THOMAS MULVANEY, Individually and as Representatives of the INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 9,
Petitioners,

vs.

ANHEUSER-BUSCH, INC., a Corporation,
Respondent.

PETITION FOR A WRIT OF CERTIORARI.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1953.

LLOYD WEBER, RUSSELL DAVIS, WALTER PATRICK, THOMAS BLAKE, ALBERT MELTON, WINFIELD SCOTT MUSLER, ROBERT HAMMER, WILBERT A. REED, BERNARD SIEMER, and THOMAS MULVANEY, Individually and as Representatives of the INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 9,
Petitioners,

vs.

ANHEUSER-BUSCH, INC., a Corporation,
Respondent.

PETITION FOR A WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

Respondent, Anheuser-Busch, Inc. (plaintiff below), is admittedly engaged in interstate commerce (R. p. 22) in the business of ". . . manufacturing and selling beer, yeast . . . and other commodities," with its principal place of business in the City of St. Louis, Mo. It employs approximately 6,000 persons in its St. Louis plant (R. p. 22) of whom about 220 are members of the International Association of Machinists, District No. 9, petitioner herein (defendant below) (R. p. 104).

Petitioner has for approximately 25 years been recognized by respondent as the exclusive bargaining representative of respondent's employees in its St. Louis plant who are employed as machinists (R. p. 24). Petitioner was certified as such exclusive bargaining representative by the National Labor Relations Board (hereinafter referred to as the N. L. R. B. or the Board) on March 25, 1948 (R. p. 25).

In 1951 petitioner gave due and timely notice under the Labor Management Relations Act, 1947 (hereinafter referred to as the L. M. R. A., 1947), and likewise under the provisions of the then existing contract between the parties of its desire to amend and modify the said contract in certain particulars (R. pp. 15, 69). The respondent gave no notice of its desire to terminate the contract or to modify it.

Negotiations between the parties began on December 19, 1951 (R. p. 5). The respondent then insisted on the deletion of Section 2 of Article VII of the said contract.[1] On March 24, 1952, petitioner filed its unfair labor practice charge against the respondent with the N. L. R. B. alleging refusal on the part of the respondent to bargain in good faith. (Said charge was amended on April 18, 1952.) (R. p. 70.) The Regional Director for the 14th Region of the Board refused to issue a complaint, which refusal,

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[1] The said Article VII in its entirety is as follows:

"Article VII, Section 1. Jurisdiction: The employer agrees that all turning, boring, fitting, filing, planing, shaping, babbitting, chipping, sawing and machinery repairing on gasoline, diesel and electric trucks and automobiles in the plant and the making, assembling, erecting and repairing of all machinery of all descriptions and parts thereof performed within the employer's plant by the employer shall be performed by employees within the bargaining unit as set forth in Section 1 of Article 1 of this agreement, either under its own supervision as the employer shall select."

"Section 2: In the event it becomes necessary to have such work hereinbefore described contracted out, the employer shall let out such work to and select contractors who have with the International Association of Machinists collective bargaining agreements which contain provisions corresponding to or consistent with the aforesaid jurisdictional limitations" (R. p. 4).

on appeal, was sustained by the General Counsel of the Board. (See Administrative Decisions of General Counsel, N. L. R. B. case No. 766, August 17, 1953, par. 12,776, CCH Labor Law Service.) After negotiations broke off because of respondent's insistence on the deletion of the said Section 2 of Article VII, and after the Federal Mediation and Conciliation Service was notified, a strike vote was taken on April 6, 1952, the vote being 206 to 14 in favor of a strike. Petitioner, on April 7, 1952, struck and peacefully picketed the premises of the respondent (R. p. 6). The said picketing was peaceful in all respects (R. pp. 16; 44-47; 48-51; 51-54; 54-55; 70, 110).

On April 8, 1952, respondent filed with the Board (14th Region, St. Louis) unfair labor practice charges against the petitioner alleging that petitioner was violating Section 8 (b) (4) (D) of the N. L. R. A., as amended[2] ". . . with the object and purpose of forcing and requiring Anheuser-Busch, Inc., and those contracting with it for the purpose of performing construction work, to assign and cause to be assigned, particular work to employees who are members of and represented by other labor organizations . . .". A notice of hearing was issued by the N. L. R. B. in accordance with Section 10 (k) of the Act,[3] and after the hearing of said alleged charge on July 8, 1952, the Board on November 18, 1952, quashed said notice of hearing, sustaining petitioner's motion ". . . to quash the notice of hearing on the ground that the evidence did not establish a violation of Section 8 (b) (4) (D) as alleged in said charge" (101 N. L. R. B., p. 346, No. 87).

On April 19, 1952, respondent filed its petition and complaint in the Circuit Court of the City of St. Louis, Missouri (R. p. 1), and its amendment by interlineation on April 30, 1952, alleging violation of the Missouri Restraint of Trade (Conspiracy) Statute [R. p. 8, par. 15 (a), re-

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[2] Section 8 (b) (4) (D) of the Act appears in Appendix A.
[3] Section 10 (k) of the Act appears in Appendix A.

spondent's complaint]. The complaint sought to enjoin petitioner from picketing the premises of the respondent in the City of St. Louis (R. p. 2 etc.). The strike and picketing resulted from unsuccessful negotiations directly between the primary parties and was based solely, as stated, supra, on respondent's insistence on the deletion of the said clause (Section 2, Article VII) which appeared in the prior contract between the parties.

The object and purpose of the picketing had to do with the terms and conditions of employment of petitioner concerning the protection and assurance of the work contended for by the petitioner.

On April 19, 1952, and prior to the amendment by interlineation on April 30, 1952, alleging the violation of the Missouri Restraint of Trade Statute, the trial court on the same date, to-wit, April 19, 1952, without notice or hearing, *ex parte*, issued its restraining order and injunction, enjoining petitioner from any and all picketing, which injunction was made final (R. p. 83) and affirmed by the Supreme Court of Missouri (R. pp. 104, 119).

In its original complaint to the State Court respondent charged that petitioner's strike and picketing was for the purpose of furthering a jurisdictional dispute between the petitioner and the Millwrights (A. F. L.), and constituted a secondary boycott, and as such was violative of certain sections of the N. L. R. A., as amended, and of the L. M. R. A. 1947, to-wit:

> (Par. 9) ". . . and therefor constitutes, as to plaintiff, a secondary boycott, and is in violation of Section 8 (b) (4) (A) and (B) of the National Labor Relations Act, as amended, and Section 303 (a) (1) and (2) of the Labor Management Relations Act 1947, and is an attempt by the Machinists, using coercion on plaintiff, to illegally establish the Machinists as bargaining representative for other employees of other employers for

whom the said Machinists have not been certified as bargaining representative by the National Labor Relations Board; and also an attempt to coerce other employers beyond the control of plaintiff to award such work to said Machinists and to unlawfully extend the bargaining rights of said Machinists" (Par. 9, Resp's Complaint, R. pp. 6-7).

(Par. 10 ". . . and therefore constitutes a jurisdictional dispute and is in violation of Section 8 (b) (4) (D) of the National Labor Relations Act, as amended, and Section 303 (a) (4) of the Labor Management Relations Act, 1947" (Par. 10, Resp's Complaint, R. p. 7).

(Par. 15) "Said conduct and activity referred to in Paragraph 14 constitutes a secondary boycott under the common law of the State of Missouri, **and in addition,** is in violation of Section 8 (b) (4) (A) of the National Labor Relations Act, as amended, and Section 303 (a) (1) of the Labor Management Relations Act 1947." (Emphasis ours.) (Par. 15, Resp's Complaint, R. p. 8.)

By the aforesaid amendment of April 30, 1952, and after the issuance by the trial court of the "ex parte" injunction respondent, for the first time, alleged that petitioner's conduct was also violative of the Missouri Restraint of Trade Statute, R. S. 1949, Sec. 416.010, having to do with combinations in restraint of trade (R. p. 8, Par. 15a, Resp's Complaint).

On the 30th day of April, 1952, respondent's cause was removed by petitioner to the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri on the grounds that the state court had no jurisdiction in the matter. The said cause was subsequently remanded by said Court on the 6th day of June, 1952, because the said United States District Court had no power to grant relief.

In due course, on the 10th day of June, 1952, petitioner filed in the State Court its "Separate Motion to Dismiss for Want of Jurisdiction and Failure to State a Cause of Action," and also filed its "Separate Return to the Order to Show Cause and Answer of Defendants" (Petitioners) (R. pp. 11-17).

On the 26th day of June, 1952 (R. p. 19), this matter was heard by the trial court, and on the 3rd day of October, 1952, the trial court overruled the petitioner's (defendant's) Separate Motion to Dismiss for Want of Jurisdiction and Failure to State a Cause of Action, and on said day entered its decree, finding for the respondent and against petitioners, granting respondent a permanent injunction (R. pp. 72-82; 83).

From the finding and decree of the trial court, petitioner appealed to the Supreme Court of Missouri, which Court on the 8th day of February, 1954, entered its decision and judgment affirming the finding and decree of the trial court. Motion for rehearing was overruled by the Supreme Court of Missouri by per curiam opinion on the 8th day of March, 1954 (R. p. 124), and Stay of Mandate was granted on the 12th day of March, 1954, for an indefinite time, i. e., until the ruling by this Court on this petition for a Writ of Certiorari (R. p. 127).

II.

HOLDING OF THE SUPREME COURT OF MISSOURI.

1. The Supreme Court of Missouri held that there was no labor dispute and that no unfair labor practice was involved because the N. L. R. B. had so found in its opinion and decision on the unfair labor practice charge filed by respondent (District 9, International Association of Machinists, and Anheuser-Busch, Inc., 101 N. L. R. B., p. 346, No. 87) (R. pp. 105, 111).

2. That the conduct of petitioner constituted and was a conspiracy in violation of the common and statutory law of Missouri (R. p. 111).

3. That the sole and unlawful purpose of the conduct of petitioner was to effectuate the petitioner's unlawful conspiracy to compel and coerce respondent to join said conspiracy to violate the law (R. p. 111).

4. That the picketing was effected by an agreement and combination of the members in restraint of trade and constituted a local transportation combination which denied and unlawfully prevented the transportation of products from respondent's plant (R. p. 112).

III.

OPINION OF THE SUPREME COURT OF MISSOURI.

The opinion of the Supreme Court of Missouri is reported as Anheuser-Busch, Inc., v. Lloyd Weber et al., 265 S. W. 2nd 325, ... Mo. ... (not yet officially reported), and is dated February 8, 1954. It is herein set out R. pp. 104-119.

The motion for a rehearing (R. pp. 120-123) was overruled on March 8, 1954 (R. p. 123). Per Curiam Opinion was filed on March 8, 1954 (R. pp. 124-126), and Stay of Mandate was ordered on March 12, 1954 (R. p. 127).

IV.

JURISDICTION.

The Jurisdiction of this Court is invoked under Title 28, U. S. C. A., Section 1257 (3) (June 25, 1948, c. 646, 62, Stat. 929). There is a substantial Federal question involving the intrusion by the State of Missouri in the field of labor relations in interstate commerce, a subject pre-empted by Congress and over which the N. L. R. B. has exclusive jurisdiction; also there is the question of the supremacy of the Federal law under Article VI of the Constitution of the United States.

The above Federal questions were raised in the first instance in the trial court by petitioner's "Separate Motion to Dismiss for Want of Jurisdiction . . ." (R. p. 11); were continued in their "Return to the Order to Show Cause and Answer" (R. pp. 13, 105), followed in its "Motion for a New Trial" (R. p. 87), also and raised in its "Motion to Modify," etc., the decree of the trial court (R. p. 83).

The questions were briefed and argued in the Supreme Court of Missouri (R. p. 114) (Opinion of the Missouri Supreme Court).

V.

THE QUESTION.

The question presented is, whether the State Court of Missouri under the facts in this case, has the competence to assume jurisdiction and to hear and determine this case by applying state law in a labor dispute in an industry affecting interstate commerce?

VI.

STATUTES AND REGULATIONS INVOLVED.

Pertinent provisions of the foregoing are set out in Appendix A hereof.

VII.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT AND SPECIFICATIONS OF ERROR.

The Supreme Court of Missouri is in error in each and all of the following:

1. The holding of the Supreme Court of Missouri is in direct conflict with the rulings and decisions of this Court and more particularly the cases of Garner et al. v. Teamsters etc. Union et al., 346 U. S. 485, 98 L. Ed. 161; and Building Trades Council et al. v. Kinard Construction

Company, 346 U. S. 933, 98 L. Ed. 236, decided January 18, 1954, No. 48, as well as the following:

Bethlehem Steel Company v. N. Y. State Labor Board, 330 U. S. 767, 91 L. Ed. 1234, 67 S. C. 1026;

International Union etc. et al. v. O'Brien et al., 339 U. S. 454, 94 L. Ed. 978, 70 S. C. 781;

La Crosse Telephone Corp. v. W. E. R. B., 336 U. S. 18, 93 L. Ed. 463, 69 S. C. 379;

Amalgamated Assoc. of Motor Coach Employees etc. v. W. E. R. B., 340 U. S. 383, 95 L. Ed. 364, 71 S. C. 359;

Hill v. Florida, 32. S. 538, 89 L. Ed. 1782, 65 S. C. 1373.

Also see:

International Rice Mill Co. v. N. L. R. B., 341 U. S. 665, 71 Sup. Ct. 961, 95 L. Ed. 1277;

U. S. v. Hutchinson, 312 U. S. 219, l. c. 232, 234, 85 L. Ed. 788, 61 S. C. 463;

Gen. Comm. v. M. K. & T., 320 U. S. 323, l. c. 336, 88 L. Ed. 76, 64 S. C. 146;

Rice v. Santa Fe Elev. Corp., 331 U. S. 218, 91 L. Ed. 1447, 67 S. C. 1146;

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Capital Service, Inc., v. N. L. R. B., 204 Fed. 2d 848 (9th Cir.);

California Assoc. of Employers v. Bldg. & Const. Trades Council, 178 Fed. 2d 175 (9th Cir.);

Amalgamated Assoc. of Motor Coach Employees v. Dixie Motor Coach Corp., 170 Fed. 2d 902 (8th Cir.).

2. (a) The Missouri Court had no jurisdiction to hear and determine this case and was without authority to enjoin a Union on charges which relate to matters either

protected or proscribed by the N. L. R. A. as amended and by the L. M. R. A. 1947, at the request of an employer engaged in interstate commerce, and such employer has no rights with respect to such conduct other than those which are justiciable under the Federal statute.

Garner et al. v. Teamsters etc., 346 U. S. 485, l. c. 501;
Hill v. Florida, 325 U. S. 538, l. c. 542;
Bethlehem Steel Co. v. N. Y. State Labor Board, 330 U. S. 767, l. c. 774;
International Union etc. v. O'Brien, 339 U. S. 454, l. c. 459;
Amazon Cotton Mill Co. v. Textile Workers Union etc., 167 Fed. 2d 183, l. c. 187;
Inland Steel Co. v. N. L. R. B., 170 Fed. 2d 247 (and cases, supra).

(b) The language of the Federal Act and its legislative history clearly excludes state action in this case by any state tribunal.

(c) The clear and unmistakable policy of Congress, as declared in the N. L. R. A. as amended, Sections 7, 13, 10 (a), 10 (j), 10 (k), 10 (l); and Sec. 303 (a) (4) L. M. R. A. 1947. Title 29 U. S. C., Par. 160 et seq., give to the N. L. R. B. the power to enforce any provision of the Act and this power ". . . is not affected by any other means of adjustment or prevention that has been given or may be established by law or agreement . . ." [Sec. 10 (a)].

(d) The facts in this case unequivocally place it within the ambit of the Federal law.

3. To permit the jurisdiction of Missouri under the facts here is to permit the eroding away of Federal authority and the destruction of the clear Congressional purpose of exclusive jurisdiction in the N. L. R. B.

4. A conflict of law exists and the Federal law is supreme under Article VI of the Constitution of the United States.

Art. VI, Constitution of U. S.

VIII.

ARGUMENT.

1. **The Supreme Court of Missouri is in Error in Holding That the Cases of Garner et al. v. Teamsters Union et al., 346 U. S. 485; 98 L. Ed. 161; Building Trades Council et al. v. Kinard Construction Company, 346 U. S. 933; 98 L. Ed. 236 (Decided January 18, 1954, No. 48), Are Not Applicable and Controlling in This Case.**

As we read the Garner case we deem it dispositive of the instant matter, especially if the spirit and intent of that case and **the principle** it announces is followed and no strained or unnatural construction is given it. We think the Supreme Court of Missouri did just that, apparently seeking to evade the impact of the Federal law and to usurp for itself control and regulation which we believe cannot be permitted.

The Missouri Court seeks to brush aside and to ignore this Court's holding in the Garner case by stating: "In the Garner case . . . (and others cited by petitioner) . . . unfair labor practices were squarely in issue, and jurisdiction in those cases was in the National Labor Relations Board under par. 160 (a) of the L. M. R. A. 1947" (R. 117), thus inferring that there were no unfair labor practices in the case at bar and hence the Garner case cannot control! Yet we say that there can be no more definite and certain allegation of unfair labor practices than respondent has made in this case and has squarely put in issue and by which it is bound. Therefore, under the facts, it is indeed a strained reasoning by the Missouri Court that no unfair labor practice exists in the instant matter because, says the Missouri Court, the opinion of the N. L. R. B. in respondent's unfair labor practice charge case so states. **This we flatly deny.**

It must be remembered that the N. L. R. B. has the **primary and exclusive** right to determine in the first instance the existence of a labor dispute, its materiality, and whether there is an unfair labor practice under the Federal law. This is elementary. No state court has a right to decide these factors for itself—one way or another, as the Missouri Court seeks to do.

The Board exercised its exclusive jurisdiction when invoked by respondent. The Board, then had the unquestioned right to decide the matter. It quashed the notice of hearing on the Union's motion, which in effect dismissed the charge. Decision by the Board does not create or destroy jurisdiction. This Court, in **Bethlehem Steel Company v. N. Y. State Labor Board,** 330 U. S. 767, l. c. 775, has appropriately held:

> "The power to decide a matter can hardly be made dependent on the way it is decided."

The Board **did not decide** that it had no jurisdiction but rather that under the evidence presented there was no basis for respondent's charge, that there was no **present** demand for assignment of work such as is contemplated by Section 8 (b) (4) (D) of the Amended Act. A reading of the Board's decision, **101 N. L. R. B. 346 (No. 87)**, demonstrates clearly that there is no foundation in fact for the Missouri Court's conclusion and holding. There are **other sections** of the Federal law also alleged by respondent to have been violated by petitioner, which the Board has had no opportunity to determine or even to consider. The gravamen of respondent's complaint, as its petition shows, and particularly Pars. 3, 9, 10 and 15 (R. pp. 3, 6, 7, 8), is that the whole controversy is based on a jurisdictional dispute of long standing with the Millwrights (Carpenters). This question is clearly for the determination of the N. L. R. B. on a proper presentation to it. [N. L. R. A. as amended, Sec. 8 (b) (4) (D); Sec. 303 (a) (4), L. M. R. A. 1947.] (See Appendix A.)

This Court squarely held, in the Garner case, **the principle** for which we maintain, when it stated:

> "Congress has taken in hand this particular type of grievance when it affects interstate commerce" (346 U. S. 485, l. c. 488).
>
> ". . . The power and duty of primary decision lies with the Board, not with us. But it is clear that the Board was vested with power to entertain petitioners grievance, to issue its own complaint against respondents and, pending final hearing, to seek from the U. S. District Court an injunction to prevent irreparable injury to petitioners while their case was being considered" (346 U. S., l. c. 489).

The question propounded by this Court, and applicable here, is:

> ". . . whether the State, through its courts, may adjudge the same controversy and extend its own form of relief?" (346 U. S., l. c. 489).

We aver that the nature or character of the particular state law, which is invoked to sustain state jurisdiction, is of no moment (except to maintain and preserve the public peace from violence).

Certainly there is nothing sacrosanct about a state "Restraint of Trade Statute" which gives it dominance or precedence over Federal authority or power, any more than a state labor law. Both must yield if the power of Congress is to be recognized and given effect in the field of labor relations in interstate commerce.

Without pursuing this point further, for our purpose here, we contend that this Court's conclusion in the Garner case, as stated at **346 U. S. 485, l. c. 501**, is controlling, and the Supreme Court of Missouri is entirely in error in brushing it aside and ignoring it, and in failing to accord it the controlling application for which we maintain. This Court stated (Garner case, l. c. 501):

> "We conclude on the basis of the allegations, the petitioners could have presented this grievance to the National Labor Relations Board. The respondents were subject to be summoned before that body to justify their conduct. We think the grievance was not subject to litigation in the tribunals of the State."

This is so, we repeat, regardless of **any** state law it is alleged that petitioners **also** may have violated. The purpose of Congress to give to the N. L. R. B. exclusive, primary jurisdiction cannot be negated or emasculated by procedure as is sought to be imposed by Missouri. Nor can the Missouri Court hold, by its unsupported conclusion, that there is no labor dispute. To do so, we maintain, flies in the face of reason, and every realistic concept of a labor dispute.

Section 2, par. 9, of the N. L. R. A., as amended [U. S. C. A., Title 29, Sec. 152 (9)] defines a "labor dispute" as:

> ". . . **any controversy** concerning terms, tenure, **or conditions of employment** or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange **terms or conditions of employment** . . ." (Emphasis ours.)

This is also essentially the definition of the term to be found in the Norris-LaGuardia Act [U. S. C. A., Title 29, Sec. 113 (c)].

As a matter of fact, as we have stated, the N. L. R. B., in its ruling (101 N. L. R. B., p. 346, No. 87) on the respondent's unfair labor practice charge, held there was no **present** dispute as to the assignment of work. Factually the Board did not rule there was no "labor dispute" as the Missouri Court would have it appear, and as that term is understood between employees and employers, and as defined in the Act.

So we assert that the state court should not be permitted by judicial fiat to declare that there is no labor dispute in

the instant matter and thus seek to assert jurisdiction. The determination of this question is exclusively for the N. L. R. B. and so this Court has held, particularly in the Garner case, supra. It should be remembered that there was no "labor dispute" in the Garner case as stated by this Court in its opinion.

2. (a) **The Supreme Court of Missouri Erred in Entertaining Jurisdiction Because a State Court Has No Jurisdiction and Is Without Authority to Enjoin a Union on Charges Which Relate to Matters Protected or Proscribed by the N. L. R. A., as Amended, and by the L. M. R. A. (1947) at the Request of an Employer in Interstate Commerce, and Such Employer Has No Rights With Respect to Such Conduct, Other Than Those Which Are Justiciable Under the Act.**

(b) **The Language of the Federal Act and Its Legislative History Exclude Action in This Case in a State Tribunal.**

(c) **The Clear and Unmistakable Policy of Congress, as Declared in Sections 7, 13, 10 (a), 10 (j), 10 (k), 10 (l), of the N. L. R. A., as Amended, U. S. C. Title 29, Par. 160 et seq., and Sec. 303 (a) (4) of the L. M. R. A. (1947), Give to the N. L. R. B. the Power to Enforce Any Provision of the Act and This Power " . . . Is Not Effected by Any Other Means of Adjustment or Prevention That Has Been Given or May Be Established by Law or Agreement . . .," Sec. 10 (a).**

(d) **The Facts in This Case Unequivocally Place It Within the Ambit of the Federal Law.**

At this point it may be well to consider the national policy with respect to labor relations in interstate commerce, as declared by Congress, to demonstrate that this policy, and its legislative history, fully supports the contention of petitioner in this case, and to show why the principle of the Garner case applies at bar.

This Court is familiar with the long asserted abuses in the issuing of injunctions in labor cases by both Federal and State courts. It was because of this that Congress passed the Norris-LaGuardia Act in 1934.

The chief, in fact the only, weapon a labor union has to obtain its demands is through the concerted activities of striking and picketing. This weapon has been the constant subject of state attack and limitation. American labor history reveals a sad picture of the abuse of labor injunctions, not infrequently granted, "ex parte"! Mr. Justice Jackson, for the Court, in **International Union, etc., v. W. E. R. B.**, 336 U. S. 245, l. c. 257, stated:

> ". . . The most effective weapon against the struggling labor union was the doctrine that concerted activities were conspiracies and for that reason illegal."

Congress, of course, had this abuse in mind and recognized how easy it was, one way or another, to return to this philosophy of government by injunction. It recognized how a narrow and restricted interpretation of the "purposes or objects" of picketing, or definitions of a "labor dispute" could again, all too easily, open the closed door of the national policy if the views and philosophies of the forty-eight states were permitted to encroach upon the national field in interstate commerce. Hence the declaration by Congress of its clear policy **that labor relations in industries affecting interstate commerce were to be solely regulated and controlled by the Federal Act,** which principle and policy this Court has consistently guarded and affirmed (Garner, Bethlehem, etc., cases, cited, supra, under "Reasons Relied on for Allowance of the Writ," Part VII hereof).

Yet Missouri has asserted that it has the first and primary right to pass on and determine:

> (a) whether the **object** or **purpose** of the strike and consequent picketing is lawful;

b) in accordance with its finding to apply its "restraint of trade" or conspiracy statute as supreme, taking precedence over all federal regulations, machinery and Boards.

We repeat this is contrary to the principle frequently determined by this Court and especially in the Garner case, when it said, 346 U. S. 485, l. c. 501:

"We think the grievance was not subject to litigation in the tribunals of the State."

Consequently, in 1935 when Congress passed the N. L. R. A. (Title 29, Secs. 151-168, C. 372, 49 Stat. 449) in unmistakable terms it evidenced its purpose of entering the field of labor relations in interstate commerce. Section 1 of the Act (1935) sets forth the purposes. After discussing the general background, Congress states (last par. Sec. 1):

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce, and to mitigate and eliminate these obstructions where they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

The above purpose was carried forward and reiterated by the passage of the L. M. R. A., 1947 (U. S. C., Title 29, Sections 151-187, C. 120), where under the designation "Short Title and Declaration of Policy," Sec. 1, the Congressional intent and purpose was again stated as [Sec. 1 (b)]:

"It is the purpose and policy of this Act . . . to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to

> provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other . . . ".

In other words, Congress intended one national policy to be determined and controlled by one national Board instead of permitting forty-eight different and independent interpretations by the respective states. This is buttressed by the Norris-LaGuardia Act, 29 U. S. C. '01-115). The legislative history of the N. L. R. A., as amended, and the L. M. R. A. (1947) reveal this purpose.

Let us here further consider the legislative history of the Act as it pertains to the immediate subjects of this discussion, namely, the **exclusive jurisdiction** of the Board in disputes in industries affecting interstate commerce and the subject of "**jurisdictional disputes**" and boycotts being unfair labor practices.[4]

We find that this **exclusive** jurisdiction of the Board, in the field of alleged unfair labor practices particularly, is repeatedly revealed. The House Report No. 245, p. 331, Legislative History of the N. L. R. A., as compiled by the N. L. R. B., states:

> "As under the present Act, the power of the Board under the amended Act **in the matter of unfair labor practices is exclusive**. . . . The rule of exclusive jurisdiction was developed many years ago by the Supreme Court in order to provide uniformity in matters of national policy under the commerce clause." (Emphasis ours.)

An exception was made as to the union security provision of the "closed shop" in Sec. 13 of the House Bill.

Because of the fact that authority was given to the Board by Sections 10 (j) and 10 (l) to seek injunctive relief, and by Section 303 (b) of the L. M. R. A. (1947),

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[4] See Appendix B hereof.

permitting aggrieved parties to file actions in damages, the Senate felt that the continuation of the word "exclusive" as it appeared in the original Act (1935) might be confusing and should be deleted. However, this in no way changed the intent and meaning of the Act as to the sole jurisdiction of the Board in that area wherein the Board had positive competence and power, such as unfair labor practices.

The Court will find an accurate and clear explanation of this phase in **Amazon Cotton Mill Company v. Textile Workers' Union etc.**, 167 Fed. 2nd 183, where the Fourth Circuit had the question before it and where this Court denied certiorari.[5]

The certain intent and purpose of Congress as we have demonstrated was to pre-empt the field of labor relations in industries affecting interstate commerce and to give to the N. L. R. B. exclusive, primary jurisdiction to hear and determine all conduct denominated as unfair labor practices under Sec. 8 (b) of the Act as amended and Sec. 303 (a) of the L. M. R. A. (1947).

As the instant record shows respondent has specifically alleged certain such unfair labor practices and particularly a jurisdictional dispute and boycott under Sec. 8 (b) (4) (D) of the Act as amended and Sec. 303 (a) (4), L. M. R. A. (1947). This very same jurisdictional dispute between the Machinists and the Millwrights was the example used and discussed by Congress at the time the foregoing word "exclusive" was deleted (see Appendix B).

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[5] In the above case the Fourth Circuit, speaking through Chief Judge Parker, had before it this very question as to the exclusiveness of the Board's jurisdiction being affected by the deletion of the word "exclusive" in the amended Act.

The Court, at l. c. 187, fully examined the reasons for the omission of the word "exclusive" and concluded: ". . . that it was not intended to vest and does not vest jurisdiction in the District Courts in cases of this sort." Of course the same reasoning applies with respect to any court, state or otherwise. The exclusive jurisdiction of the Board to utilize the machinery afforded it by Congress and to enforce the regulations laid down and proscribed by the Act is the point involved.

Senator Taft discussed the basic question of the right to strike (93 Congressional Rec. 3835 [1947]):

> "So far as the bill is concerned we have proceeded on the theory that there is a right to strike and that labor peace must be based on free collective bargaining. We have done nothing to outlaw strikes for basic wages, hours and working conditions after proper opportunity for mediation."

In other words, Congress has recognized and given employees through their representatives the right to strike and act concertedly for wages, hours, **terms and conditions of employment.** In the instant case the petitioners assert the right to exercise this right in support of their demand for **certain conditions of employment,** as revealed by their demand on respondent to continue a certain clause in the contract under negotiation (Clause 2, Art. VII, supra). Yet Missouri would interfere and by its determination hold that there is no lawful purpose or object under its law, and thus preclude the Federal Board from exercising its exclusive and primary jurisdiction under the Federal Act of determining this question for itself.

An observation at this point is appropriate concerning the subject of working conditions. A "working condition" or "condition of employment" is not to be so narrowly construed as to destroy or defeat its implication. Certainly what is and what is not such a "condition" under the Federal law is not to be left to the varied definitions of the forty-eight states, as Missouri would seek to do.

"Conditions of employment" necessarily are many and varied. The reasonable relationship of the terms and conditions under which working men desire to work for an employer to their employment cannot be defined by any hard and fast rule. Hard and fast rules have no place in the area of human relationships such as employee and employer. They must be not only flexible, but broad, if

industrial peace is the chief object to be sought. The effort of men to protect their work or gain additional work, even at the expense of others, if peacefully sought, should never be narrowly condemned and removed from the scope of conference, discussion and negotiation, as Missouri would seek to do contrary, we, say, to the Federal policy.

The Seventh Circuit in **Inland Steel Company v. N. L. R. B.**, 170 Fed. 2d 247, discussed "conditions of employment."[6] In this case a pension and retirement plan, voluntarily inaugurated by the company, was the question. Also see **Amazon Cotton Mill Co. v. Textile Workers Union etc.**, 167 Fed. 2nd 183, wherein "conditions of employment" are likewise discussed. In the Amazon case a pension and retirement plan was also involved.

In this connection it must be remembered that Congress has taken over **the field of** labor relations in interstate commerce. This means the **entire area** of such relations, not just a segment or part. Unless Congress has specifically exempted a particular part of this field, or has remained silent on the subject, or has ceded it to state control, the states are excluded and so the cases hold.

Where the public peace and order of a state are transgressed by violence, mass picketing and related conduct, then the traditional right of a state to protect itself under its police power, from such breaches, are and always have been recognized as proper areas of state regulation and control. The instant case does not by any means fall in this restricted area.

Congress has not remained silent in the instant area but has specifically " . . . taken in hand this particular type

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[6] The Inland Steel case involved the refusal of the Company to bargain on the subject of its own, voluntary pension and retirement plan, on the ground ". . . that it is not required to do so under the terms of the Act. It follows then that the issue for decision is—whether pension and retirement plans are part of the subject matter of compulsory collective bargaining within the meaning of the Act."

of grievance . . . " (Garner case). Congress has specifically enumerated certain conduct of employees as unfair labor practices under Section 8 (b) of the Act. Respondent alleges the conduct of petitioners herein as violative of those provisions of the Act (R. pp. 3, 6, 7, 8, Pars. 3, 9, 10, 15, Resps. Compl.).

Therefore, when Congress entered this field and provided regulations, methods, machinery and Boards to effect the regulations, all state regulation and control was necessarily precluded and excluded. This is implicit in the Act. We repeat, Congress has pre-empted this field in interstate commerce. To permit state interference by one means or another, by pretext or strained and narrow processes of reasoning and construction, would be to emasculate the Federal Policy and destroy it as well as to do violence to the Federal supremacy provision of the United States Constitution, Article VI.

To sustain these principles this Court has repeatedly ruled in the cases we have set out, supra, i. e.:

Garner et al. v. Teamsters etc. Union et al.;
Building Trades Council et al. v. Kinard etc.;
Bethlehem Steel Co. v. N. Y. State Labor Board;
International Union etc. v. O'Brien et al.;
La Crosse Tel. Corp. v. W. E. R. B.;
Amalgamated Assoc. Motor Coach Employees etc. v. W. E. R. B.;
Hill v. Florida;

and other cases cited under Part VII of this petition, supra.

Of course the above list is not meant to be all inclusive. There are many more cases to the same effect. The foregoing, we believe, suffices our purpose here.

The **principle** announced in these cases is the exclusion from interference in the federal field. The **emphasis** is

directed **against the intrusion**, not the one who seeks it. A State, a State Labor Board or a State Court are all necessarily included in the prohibition.

This Court, in **Hill v. Florida**, 325 U. S. 538, l. c. 542, held:

> "The Board properly rejected the employers contention that Congress did not intend to subject the 'full freedom' of employees to the eroding process of 'varied and perhaps conflicting provisions of state enactments.' Cf. N. L. R. B. v. Hearst Publications, Inc., etc., 322 U. S. 111."

In Hill v. Florida it was the State of Florida which asserted the right to invade the Federal field by its enactment of a specific law seeking to license union business agents, etc.

In **Bethlehem Steel** it was a State Labor Board. This Court held, at 330 U. S. 767, l. c. 774:

> "But when federal administration has made comprehensive regulations effectively governing the subject matter of the statute, the Court has held that a state regulation in the field of the Statute is invalid even though the particular phases of the subject has not been taken up by the Federal agency. (Cases cited.)"

and at l. c. 776 the Court says:

> "The Federal Board has jurisdiction of the industry in which these employees are engaged and has asserted control of their labor relations in general. . . . We do not believe this leaves room for the operation of the state authority stated."

In **International Union, etc., v. O'Brien**, 339 U. S. 454, 44 L. Ed. 978, 70 S. C. 781, where the right to strike was involved, it was held, l. c. 459:

"Clearly, we reaffirm the principle that if 'Congress has protected the union conduct which the state has forbidden, the state legislature must yield.' That principle is controlling here."

At bar petitioner has consistently contended that Congress has—

(a) "protected" its conduct in exercising its right to strike and to peacefully picket respondent for the object and end sought and, likewise, that Congress has—

(b) proscribed petitioner's alleged conduct as an unfair labor practice (jurisdictional strike and boycott) under Sec. 8 (b) (4) (D) of the Act as amended and Sec. 303 (a) (4) of the L. M. R. A. (1947) as alleged by respondent in its petition.

Hence, we argue that in either event the subject matter is within the area exclusively reserved for determination **in the first instance** by the Federal Board and that Missouri has no right or power to predetermine it.

"Congress has occupied this field and closed it to state regulations." O'Brien case, supra, 339 U. S. 454, l. c. 457.

The Garner case, supra, is completely determinative of petitioner's contention at bar. We repeat what we have previously stated:

"Congress has taken in hand this particular type of grievance when it affects interstate commerce" (346 U. S. 485, l. c. 488). ". . . The power and duty of primary decision lies with the Board, not with us. But it is clear that the Board was vested with power to entertain petitioner's grievance (at bar, respondent's) to issue its own complaint against respondents (at bar, petitioners) and, pending final hearing, to seek, from the U. S. District Court, an injunction to prevent

irreparable injury to petitioners (at bar respondents) while their case was being considered" (346 U. S., l. c. 489).

It may be argued that the case of **Giboney et al. v. Empire Cold Storage & Ice Co.**, 336 U. S. 490, 69 S. C. 684, 93 L. Ed. 834, is in point here. **This we deny!** The Giboney case came to this Court on one single question, namely, did the Fourteenth Amendment of the Federal Constitution (Freedom of Speech) deprive Missouri of its right to hear and determine the issues **there** presented? This Court said "No." The facts on which the Giboney case was heard, admittedly occurred prior to the amended N. L. R. A. and the L. M. R. A. (1947), although the case was decided subsequently. The Union (The Teamsters) were seeking to unionize certain independent ice peddlers in Kansas City, Missouri, and to this end were seeking to prohibit Empire and other ice manufacturers from selling and furnishing ice to these peddlers and thus to compel these manufacturers to aid in the unionization of these peddlers. The Teamsters were enjoined by the state court from continuing this activity. The **single** issue presented to this Court and on which this Court decided was, were petitioners' rights of free speech violated under the Fourteenth Amendment of the United States Constitution? **There was no question or issue involved or presented directly or indirectly challenging the jurisdiction or the right or power of Missouri to hear or determine the issues in the first instance.** There was no National Act even suggested. In fact, no provision of the N. L. R. A. applied!—or was involved. So we say, this case is without merit at bar where the sole question is one of primary jurisdiction under the Federal law and policy to hear and determine certain issues alleged by respondent to be unfair labor practices under the Federal law. In other words, the **same issues** as were determined by this Court in the Garner (and Kinard) cases.

3. **To Permit the Jurisdiction of Missouri Under the Facts Is to Permit the Eroding Away of Federal Authority and the Destruction of the Clear Congressional Purpose of Exclusive Jurisdiction in the N. L. R. B.**

It seems to us that the mere statement of the foregoing, especially after our previous discussion, should be sufficient to justify its assertion. We have fully demonstrated, we think, the exclusive character of the jurisdiction, power and right of the N. L. R. B. in matters such as are involved in this case. The respondent has alleged those powers and has invoked them. Respondent itself has built the fence encompassing and defining the controversy and within the limit of this field respondent must be held. The questions of boycott, jurisdictional dispute, forced work assignment, etc., raised by respondent are within the sole and exclusive competence of the N. L. R. B. to hear and decide in the first instance, exclusive of any state tribunal.

The grievances alleged are in the field of labor relations in interstate commerce, as this Court has said in the Garner case (supra). If this be so then neither Missouri, nor any state, can be permitted to erode away and destroy the Federal law. If Missouri can do what it here seeks to do for the self-asserted reasons it advances, then any state can do the same and the wording, intent and purpose of the Federal Act would be emasculated. The states would determine their own power, jurisdiction and rights in the face of the Congressional purpose and in the teeth of the Constitutional power. As this Court said in Hill v. Florida (supra), "What Congress constitutionally has given the states cannot constitutionally take away."

4. **A Conflict of Laws Exists and the Federal Law Is Supreme Under Article VI of the Constitution of the United States.**

Assuming, for argument's sake, respondent's position to be correct, then, concerning the issues here involved, there is a definite conflict of laws, to-wit:

(a) The N. L. R. A., as alleged, and

(b) The Missouri Restraint of Trade Statute.

The answer then becomes simple, needing no prolonged argument or citation to support it, the Federal law **is supreme and must prevail.** (U. S. Constitution, Article VI.)[7]

THE QUESTION.

The Question Therefore Presented Is Whether the State Court of Missouri, Under the Facts in This Case, Has the Competence to Assume Jurisdiction and to Hear and Determine This Case by Applying State Law in a Labor Dispute in an Industry Affecting Interstate Commerce? Petitioner Says "No."

Under the "Summary Statement of the Matter Involved," Part I hereof, we have set forth the factual background of the question here presented, which, we believe, justifies our answer of "No" to this question.

The Federal law is both an unequivocal and comprehensive assertion of power by Congress to regulate the relations of the parties to this action. This is true whether:

(a) Viewed in the light of petitioner's assertions that they are engaged in lawful concerted activities to achieve their lawful purpose, or

(b) From the viewpoint of the Supreme Court of Missouri that petitioner seeks, by reason of a jurisdictional dispute, and boycott, to compel respondent to violate the Restraint of Trade (Conspiracy) Statute of Missouri.

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[7] Article VI of the United States Constitution, paragraph 2, is as follows:

"Supreme Law of the Land. This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

In either event the issues fall squarely within the regulatory power of Congress.

The point on which the Missouri Court erred, it seems to us, is in holding:

(a) There is no labor dispute, and

(b) There is no unfair labor practice, because the N. L. R. B. said so! (R. p. 105.)

This is patently wrong and is not the determinative factor. This case, with its allegations of violation of the Federal law, was filed in April, 1952. On April 19, 1952, when respondent obtained its "ex parte" restraining order and injunction, there was no mention or pleading of any Missouri Restraint of Trade Statute! The case was heard in June, 1952, by the State Court over the petitioner's objections that there was no jurisdiction in the State Court and it was determined in October, 1952, by making the "ex parte" restraining order and temporary injunction of the State Court permanent.

After the jurisdiction was thus fully usurped, the incongruous position is now asserted that since it is alleged the N. L. R. B. **in November, 1952** (101 N. L. R. B., p. 346, No. 87), **months later,** held that there was no dispute and no unfair labor practice, **this can be applied retroactively** to justify the wrongful assumption of jurisdiction by Missouri **in April-June, 1952.** This is unbelievable logic and reasoning. We repeat, the N. L. R. B. had original, primary and exclusive jurisdiction, under the law and the facts in this case, as respondent by its actions and conduct has admitted. **The Board's decision did not give it or deprive it of jurisdiction.**

Respondent asserts that the instant subject is not a proper one for negotiation; that it is not related to a "condition of employment"; that it is unlawful; that it seeks to coerce or compel respondent to violate the Missouri Restraint of Trade Statute; that in reality it represents

a jurisdictional dispute between the petitioner (Machinists) and the Millwrights (Carpenters).

Hence the issue is sharply presented—is the subject sought a proper one for negotiation as a "condition of employment" under the Federal law? If it is, as petitioner alleges, and as it has demonstrated, supra, then certainly no one can be heard to complain and no injunction can issue. **Who is to determine and answer this question?** The Federal agency or the State Court?

Under the facts and the pleadings in this case the answer is clear. The Federal law, machinery and regulations must be applied in the first instance. To argue to the contrary is to argue for the complete impotency of the Federal law and regulations because we have here an industry admittedly engaged in interstate commerce over whose labor relations the Federal law has taken direct jurisdiction. The Federal jurisdiction is primary and exclusive as this Court has repeatedly ruled as we have fully shown.

Therefore, if the sought object is determined by the Federal procedures to be a proper one for negotiation, then Missouri must yield to the dominant and supreme law. If the sought object is determined under the Federal procedures to be an improper one, then the N. L. R. B. has power to order these petitioners to cease and desist and it is afforded injunctive facilities under the Act to protect the parties.

Petitioner argues that when Missouri injected its laws and regulations, and determined for itself the lawfulness or unlawfulness of the conduct in question, it violated the controlling authority of the Garner and the many other Federal cases we have cited.

Federal power and authority should not be subjected to the ingenuous attacks of the states in determining in the

first instance whether or not a guaranteed federal right is being exercised for a proper purpose or object. To permit a state to first determine this question for itself would be to destroy the federal power and would do effective violence to any concept of federal pre-emption or power in this field. It would render Sections 8 (b) (4); 10 (a) (j) (k) (l), N. L. R. A., as amended, and Section 303 (a) of the L. M. R. A., 1947, impotent. These sections in particular afford respondent its exclusive remedy.

The holding and ruling of this Court in the Garner case, supra, is completely controlling and decisive here.

Wherefore, your petitioner prays that a writ of certiorari be issued by this Court to the Supreme Court of Missouri directing that Court to certify and send to this Court, for its review and determination, a full and complete transcript of the record and proceedings in Anheuser-Busch, Inc., Respondent, v. Weber et al., Appellants, and that the judgment of the Supreme Court of Missouri be reversed by this Court.

Respectfully submitted,

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APPENDIX A.

The following are the various pertinent sections of the N. L. R. A., as amended, and the L. M. R. A. (1947) (U. S. C., Title 29, Secs. 151-187, c. 120):

Statement of Policy.

Section 1 (b). Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

TITLE I.

Amendments.

Sec. 101; Findings and Policies.

Section 1. * * *

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial ob-

structions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS.

"Section 2. When used in this Act—

Labor Dispute.

"(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

Rights of Employees.

"Section 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

Union Unfair Labor Practices.

"Section 8 (b). It shall be an unfair labor practice for a labor organization or its agents—

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is:

"4 (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

"4 (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9;

"4 (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: Provided, that nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act";

TITLE III.

Suits by and Against Labor Organizations, Boycotts and Other Unlawful Combinations.

Section 303 (a). It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or other self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a

refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.

TITLE I.

Exclusive Right of Majority Representative.

"Section 9 (a). Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, that any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect; Provided further, that the bargaining representative has been given opportunity to be present at such adjustment.

PREVENTION OF UNFAIR LABOR PRACTICES.

Power of Board.

"Section 10 (a). The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise; Provided, that the Board is empowered by agreement with any agency of any State or Territory to cede to such agency

jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

Power of Board to Petition Courts for Temporary Injunctions.

"Section 10 (j). The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

Determination of Jurisdictional Disputes by Board.

"Section 10 (k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 8 (b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted,

or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed."

Duty of Board to Seek Injunctive Relief Against Certain Strikes and Boycotts.

"Section 10 (l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: **Provided further**, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such

person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: **Provided further**, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D).

APPENDIX B.

Pertinent References as to Legislative History of the Act and Jurisdictional Strikes. (Footnote 4.)

93 Cong. Rec. 3329; Cong. Rec. Senate 4/9/47; p. 995, Legislative History, published by the N. L. R. B.; **Senator Lucas** read into the Record a letter from Griesedieck Western Brewing Company touching directly on this dispute. The following are the pertinent excerpts:

"February 3, 1947.

"Hon. Scott Lucas
United States Senate
Washington, D. C.

Dear Mr. Lucas:

We have had a jurisdictional dispute for the past 3 weeks at our new bottling plant (Belleville, Illinois), ... (Sets forth parties to dispute, i. e., The Machinists and the Millwrights.)

". . . We would appreciate it very much if you would telegraph or write the following: Mr. Harvey Brown, president, International Association of Machinists, Machinists Building, Washington, D. C.; Mr. William Hatchinson, president, Brotherhood of Journeymen Carpenters & Joiners, Indianapolis, Indiana . . . ."

Letters were written by Sen. Lucas to each of the above parties:

"It has come to my attention that there is a jurisdictional dispute over the erection of bottling machinery in the Griesedieck Western Brewing Company of Belleville, Illinois. . . . I do not hesitate to say that the matter of jurisdictional disputes is one of the things that Congress will probably outlaw when new legislation is written. . . ."

The above William Hutchinson is the same one involved in **U. S. v. Hutchinson,** 312 U. S. 219, l. c. 232, 234, and having to do with the instant dispute between the parties at bar.

Note that this Court, in the Hutchinson case, pertinently observed that since the Norris-LaGuardia Act prohibited the issuance of injunctive relief in a controversy, jurisdictional or otherwise, and thus left the matter to negotiation, etc., that the same conduct thus permitted could not be the subject of criminal sanctions under the Sherman Anti-Trust Act.

This is what petitioner herein contends, subject to the amendments of the N. L. R. A. as they appear in Section 8 (b) (4) (D) of the amended Act.

These amendments make a jurisdictional dispute an unfair labor practice and hence within the sole jurisdiction of the N. L. R. B. to whom unfair labor practices have been exclusively awarded.

Senator Morse, 93 Cong. Rec. 1890-1; Cong. Rec. (Senate) 3/10/47, pp. 950-954, Legislative History, published by the N. L. R. B., in discussing Sec. 8 (b) (4) (D), said:

> "I have attempted to define as unfair labor practices certain types of strikes, **jurisdictional disputes and secondary boycotts.** These provisions are in Sec. (4) (D) of the bill . . .." (Emphasis ours.)

Senator Taft, 93 Cong. Rec. 3954; Cong. Rec. (Senate) 4/23/47, p. 1012, Legislative History published by the N. L. R. B., states:

> "The fourth type of unfair labor practice is the ordinary jurisdictional dispute in which two unions compete for work on a particular job."

Senator Ellender, 93 Cong. Rec. 4255-6; Cong. Rec. (Senate) 4/28/47, pp. 1056-7-8 Legislative History published by the N. L. R. B.

Senator Ball, 93 Cong. Rec. 2377; Cong. Rec. (Senate) 5/13/47, p. 1524 Legislative History published by the N. L. R. B., Senator Ball stated:

> "The pending bill makes boycotts and strikes (jurisdictional) unfair labor practices, directs the N. L. R. B. to go into court and obtain injunctions stopping them and gives the injured parties the right to sue for damages actually sustained."

The legislative history of the Act is replete with testimony and declarations, of which the foregoing are but a few examples, of the Congressional intent and purpose to make jurisdictional disputes, as in the case at bar, unfair labor practices within the ambit of Federal regulation by the Act and within the sole jurisdiction of the N. L. R. B.